Appendix K
Comment and Responses

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COMMENTS AND RESPONSES

This appendix contains detailed material relating to the comments made on the DEIS during the public review process, and the responses made by BPA. It also contains a brief section about the scoping process for this EIS. This appendix contains the following:

- A series of "Umbrella Responses" that cover questions raised repeatedly on certain key subjects (Section K.1).
- A detailed comment/response matrix that lists, by letter, each comment received, together with a BPA response (Section K.2).
- Summaries of the comment meetings conducted as part of the public involvement process for the Draft EIS (Section K.3).
- Summary of Responses to Comments related to this EIS that were submitted to the first 5-year plan, Endangered Species Act Implementation Plan (2002–2006) for the Federal Columbia River Power System (2002–2006 5-Year Plan), (Section K.4).
- A brief description of the scoping process for preparation of this EIS (Section K.5).
- Photocopies of the letters received on the Draft EIS (Section K.6).

K.1 GENERAL RESPONSES

Some subjects received comments from a number of people. To avoid duplication, we have answered all such comments on a given single subject under "Umbrella Responses." Subjects that were treated under this heading include the following:

1. **Stating a Party's Preference**
2. **Claims that BPA Advocated Certain Preferences in the DEIS**
3. **The Concept of Tiered RODs**
4. **Scope of this EIS**
5. **Hybrid Alternatives**
6. **Reason for the EIS**
7. **Qualitative versus Quantitative Analysis**
8. **The Clean Water Act.**

Related subjects are also individually addressed in the Comment Matrix and corresponding changes made in the main text of this EIS itself.

1. Stating a Party's Preference

A number of commenters stated a preference for a particular Policy Direction alternative or subsequent action. BPA appreciates those statements of preference and, before making a final decision, will consider all submitted comments. The BPA Administrator will base his

decision on a variety of relevant factors, including the important information offered in the diverse spectrum of opinions of interested parties. Especially with respect to fish and wildlife mitigation and recovery issues, the citizens of the Pacific Northwest have demonstrated repeatedly that they are an extremely knowledgeable resource.

2. Claims that BPA Advocated Certain Preferences in the DEIS

The EIS evaluates the proposed action and the reasonable alternatives to it. Because each policy direction alternative is typified by certain kinds of actions, the overall affect of the policy direction was determined by looking at the effect of the mitigation and recovery actions that would likely be taken under it. In the process of making these evaluations, the EIS strove to be objective and transparent; that is, the evaluations were made fairly and the basis for the evaluation documented and explained.

Some commenters thought the DEIS advocated certain sample implementation actions. Advocacy was not intended. Both the draft and final EIS present the sample mitigation and recovery actions under each policy direction as actions that could likely be taken under the given policy direction. As is noted throughout the EIS, these actions are examples only, and are drawn from a variety of sources traditionally looked to for mitigation and recovery ideas. Moreover, BPA avoided identifying a preferred alternative in the DEIS to maximize and facilitate public participation by avoiding undue focus on any one alternative. BPA has identified its Preferred Alternative, PA 2002, in this FEIS as required by NEPA.

3. The Concept of Tiered RODs

This EIS is, by design, a broad, policy-level analysis. BPA chose to use this dynamic procedural tool so that the public and agency decisionmakers might, in a timely way, effectively participate in the ongoing regional debate over alternative fish and wildlife recovery and mitigation policies. The reason was not to avoid future site-specific analysis, but to improve decisionmaking by focusing all parties on the issues that are ripe for consideration, while providing a way to connect the subsequent individual decisions back to an overall policy goal via "tiered Records of Decision (tiered RODs)." When site-specific projects for fish and wildlife mitigation and recovery are later proposed, those individual RODs may be linked with the accepted broader policy direction, assuming they are consistent. If information suggests that the project would diverge from what is considered in this EIS, additional analysis and documentation would be undertaken pursuant to NEPA. In this way, interested parties can "connect the dots" of the many decisions in the fish and wildlife mitigation and recovery effort inside the scope of the overall picture.

This tiering process is preferred for its efficiency and usefulness to the public and the decisionmaker(s). Most of the environmental analyses prepared under NEPA are site-specific: a bridge to be built, a road to be constructed, or a power plant to be brought on-line. Typically, an agency or group of cooperating agencies collects, evaluates, and distributes an enormous amount of quantitative data about that particular project at that particular location. But readers often complain that such narrowly focused analyses ignore the "big picture" or cumulative impacts of similar projects within the Region (i.e., a common complaint is that they look backwards or merely justify a predetermined outcome).

In response, environmental analysts sometimes seek to create complex and detailed projection models for the entire subject. These models typically contain dozens, or even hundreds, of assumptions, and generate very large amounts of computerized data. Decisionmakers and others interpret the amount of data as an assurance of precision. However, as with most things in life, natural systems do not always behave as anticipated. The data generated by modeling are only as strong as the weakest assumption: where assumptions prove faulty, the overall result will change. This leaves decisionmakers and the public with an answer that feels *precise* but is incorrect.

Even highly qualified and experienced technical experts will usually admit that some assumptions about supply, demand, economic growth, and climatic conditions, for example, are uncertain but must be made when preparing a futuristic model. While modeling can be a vital tool in certain circumstances, the modeling results are often extremely fragile. The modeling conclusions may be accepted as *fact*, rather than as the *indicators of trends* that they are meant to be.

We have found that, with respect to projecting environmental impacts at a policy level, it is better to be generally correct than precisely wrong. We therefore chose to develop a policy-level programmatic assessment using an existing database that has been generated over the years on related actions and their associated environmental impacts, to establish a *qualitative* understanding of the essential relationships for alternative policy directions. These relationships, although not precise and quantifiable at the policy level, offer an understanding of how all the major components of a policy direction fit together and what environmental consequences might be expected. The objective is to give the decision-maker and others the opportunity to see the potential concerns of and be alerted to those unforeseen events that are likely to arise during implementation of any policy direction. These relationships can then be used as a foundation in overall strategic planning and implementation. (See also Umbrella Response on Qualitative vs. Quantitative Analysis.)

Once a particular Policy Direction is selected and presented in the EIS's ROD, the public and agency decisionmakers can then turn to site-specific actions consistent with that direction. These site-specific actions, and their associated quantifiable environmental effects, can be "tiered" from the policy-level analysis, better clarifying the extent of the effects. This stepped process helps to avoid analytical and procedural duplication and allows all parties to focus on the issues that are truly ripe for consideration. As noted earlier in this response, when new or supplemental analysis should prove necessary, it will be prepared. We have found that site-specific analysis and decisionmaking provides a superior level of information upon which to base a decision when it is tiered to an overall understanding of the general impacts within a particular subject area, such as fish and wildlife mitigation and recovery.

This tiering or stepping process can take place three ways. First, BPA could use a tiered ROD to clarify that policies, programs, or site-specific actions under consideration are clearly within the scope and adequately supported by this EIS. Second, where it is unclear whether the policy, program, or site-specific action involves legally significant new circumstances or information relevant to environmental concerns, then BPA may analyze

the action through a supplement analysis as provided for at 10 CFR 1021.314(c) to determine if a new or supplemental EIS should be prepared, or if no further NEPA documentation is required. Finally, if the action clearly involves significant new circumstances or information, then BPA may prepare a supplemental EIS tiered to this EIS, or other EISs, and document its decision through a ROD, or prepare other appropriate NEPA documentation such as an EA/FONSI. BPA expects to rely on the tiered RODs and supplement analyses whenever appropriate.

4. Scope of this EIS

Several comments expressed concern that some of the Policy Directions included actions beyond BPA's current legal jurisdiction or inconsistent with existing laws. We acknowledge that certain mitigation and recovery actions within the policy direction alternatives are beyond BPA's legal jurisdiction or inconsistent with existing laws. However, we believe that BPA must include such actions in the analysis, when preparing a policy-level EIS, for two primary reasons.

First, the Council on Environmental Quality (CEQ) has advised Federal agencies that alternatives outside the legal jurisdiction of the lead agency must still be analyzed if they are reasonable. CEQ has further stated that a potential conflict with Federal or local law does not necessarily render an alternative unreasonable. (See 40 CFR 1502.14.)

A policy-level analysis is designed to guide decisionmaking in the present *and* the future, as a foundation to tier future site-specific decisions or as a planning tool to revisit alternative policy directions. To insure its longevity, the policy-level analysis must evaluate actions *now beyond* existing authority, but *possibly within* future legal authorities. Laws are constantly being amended, repealed and created. In fact, as explained by the CEQ, an EIS may serve as the basis for modifying Congressional approval. Accordingly, BPA has included some actions that could conflict with existing laws to accommodate the possibility that laws might change in the future and to insure the vitality of the analysis, if they do. See 40 CFR 1505.2 and 1506.8.

Second, all of the reasonable Policy Directions have a foundation in actions and proposals put forth within the Region. Because BPA's intent is not to eliminate an alternative or actions from long-term consideration, or establish the value basis for the future of the Region, the sample mitigation and recovery actions for each policy direction include actions BPA may not ultimately support or have the authority to implement. BPA has spent much of its time trying to capture the many different perspectives of fish and wildlife recovery in the Region. By putting all reasonable possibilities on the table for consideration, the decisionmakers and other interested parties can see the many trade-offs and concerns of considering any particular path to move forward. See 40 CFR 1508.7 and 1508.18.

5. Hybrid Alternatives

Some comments suggested that BPA must select from among the five base alternatives described in this EIS or proceed on the Status Quo course, and that selection of a "hybrid" or "mixed" alternative would require re-circulation of the document for public comment. For several reasons, BPA disagrees. Often, an agency considers a project with a very large

number of possible reasonable alternatives. In the case of fish and wildlife recovery and mitigation, with so many potential actions to mix, match, and characterize, the number of possible reasonable alternatives was almost infinite. The five alternatives identified in the EIS were designed to represent the full spectrum of distinct reasonable alternatives along a continuum of possibilities. Even the Status Quo is a mixture of elements from the five different alternatives, although it differs from these basic alternatives in that it does not presume to proceed under a unified planning approach (see Appendix I, Table B). The CEQ's 40 Questions recognized this issue and support the use of such a methodology to help alleviate the problem of analyzing endless alternatives.

Next, within each policy direction alternative are sample mitigation and recovery actions that help characterize the alternative (see Volume 3). The impacts of those actions has been described generally in Chapters 3 and 5. When a hybrid alternative gets created for consideration, its impacts can be compared to other alternatives by examining the impacts for its component mitigation and recovery actions as provided in Chapters 3 and 5.

BPA recognizes and expects that over time other reasonable alternatives will be created from within the spectrum of policy directions presented in this EIS. In fact, BPA encouraged just such creativity in the "Build Your Own Alternative" section of this EIS (see Appendix I). Here again, by providing agencies and the public with the overall impact analysis for the sample actions, this final EIS may be used for many years, without supplementation, to guide mitigation and recovery policy.

The alternative identified in this final EIS by BPA as its Preferred Alternative, PA 2002, is within the spectrum of alternatives that were analyzed in the Draft EIS because it is similar to the Status Quo alternative with respect to environmental concerns and essentially consists of a blend of the Sustainable Use Focus and Weak Stock Focus alternatives. The impacts of the PA 2002 sample actions are discussed in this EIS, and the overall impacts of the PA 2002 can be compared to the other policy direction alternatives. Thus, the PA 2002 is within the scope of the alternatives discussed in the DEIS, and it was not necessary to recirculate this EIS for comment.

6. Reason for this EIS

In the **Foreword/Update** to this EIS, BPA discussed the rationale for preparing this analysis. (Please also see the **Purpose and Need** section in Chapter 1 of this EIS for more on the basis for the analysis.) However, there is an additional reason for the use of a policy-level approach that bears mention.

The Pacific Northwest is currently engaged in a crucial debate about fish and wildlife recovery and mitigation. It is expected that policy choices affecting the environment, economy, and energy generation and use are already being made and will continue into the future. However, the public and decisionmakers continue to find it difficult to understand the interrelationships of the multiple processes addressing these issues. This policy-level environmental impact statement provides a vehicle for timely and effective participation in these overall decisions that will frame a current and future course of fish and wildlife actions within the Region.

This EIS, by design, will keep on providing agency decisionmakers with a complete understanding of the impacts associated with certain policy options *before* they might make an irreversible commitment of resources. Because this EIS is designed to be useful for as long as the basic relationships between human activities, fish and wildlife, and the environment remain as is, the public and regional decisionmakers alike can refer to it often for an overall understanding of the environmental consequences of various actions or changes they may contemplate now and during future strategic planning.

7. Qualitative versus Quantitative Analysis

This EIS, as noted elsewhere, is a policy-level analysis. It relies upon a *qualitative* analysis of the more predictable known relationships demonstrated by past actions and associated impacts to inform the general public and agency decisionmakers of the consequences of alternative policy directions. BPA believes that this approach provides the public and decisionmakers with the information necessary to understand the possible impacts of potential policy decisions. However, BPA has been careful to compile, organize and consider the *quantitative* data that support the established relationships and to reference them in this EIS. Those who wish to independently evaluate the data underlying these fundamental relationships may easily access the data that has been incorporated by reference through the numerous footnotes and the References section. The goal is to present the essence of the enormous volume of available site-specific data in a way that will contribute to the longevity of the analysis and, simultaneously, provide the reader with a level of information that can be digested and understood which is necessary to make a policy-level decision.

One of the great challenges in presenting policy-level analysis is refining thousands of pages of specific data on numerous subjects into a manageable document to facilitate effective decisionmaking and public participation. Of course, there may be other ways to organize the reams of data. However, we believe that the organizational approach we have taken for this EIS is reasonable, and have taken care to make the underlying data available for those wishing to review the agency's findings or conclusions in more detail.

8. Clean Water Act

Several comments raised issues concerning the Clean Water Act (CWA; 33 U.S.C. § 1251 et seq., as amended). BPA, like other Federal agencies, is obligated to comply with the applicable requirements of the CWA. BPA recognizes this obligation throughout this EIS. For example, in Section 1.2.2 of this EIS, BPA identifies the fulfilling of its obligations under the CWA as one of the purposes for the proposed action. In Section 3.1, BPA acknowledges that for an alternative to be immediately viable, it must allow for compliance with the applicable requirements of the CWA. BPA thus recognizes that CWA compliance is an essential part of any Policy Direction adopted by BPA.

BPA has several responsibilities under the CWA. The CWA requires Federal agencies such as BPA to comply with all Federal, state, interstate, and local requirements respecting the control and abatement of water pollution in the same manner and to the same extent as any non-governmental entity (33 U.S.C. § 1323(a)). In cases where BPA must apply for a Federal license or permit to conduct an activity that may result in a discharge into navigable

waters, BPA must seek state Section 401 certification that the activity complies with the applicable provisions of the CWA, and must provide this certification to the Federal permitting or licensing agency (§ 1341(a)(1)). For discharges of pollutants from BPA activities or facilities, BPA also has a responsibility to comply with applicable permits issued under Section 402 of the CWA (§ 1342). In addition, BPA must obtain authorization under Section 404 of the CWA for any discharge of dredged or fill material into waters of the U.S., including wetlands (§ 1344).

Many of the comments concerning the CWA center on the current debate over alleged violations of the CWA from operation of the four Federal dams—Ice Harbor, Lower Monumental, Little Goose, and Lower Granite dams—along the Lower Snake River in eastern Washington. These four dams are owned and operated by the U.S. Army Corps of Engineers (Corps), which must make the ultimate decisions regarding the operation of these dams and steps needed to comply with the CWA. BPA nonetheless recognizes that its role as a co-manager and action agency for the Region's Federal power system and the Policy Direction it adopts may influence operational decisions that might be made by the Corps about these dams.

However, it is important to bear in mind that the Policy Direction that BPA adopts will be the ***BPA*** policy direction. It will guide BPA in its fish and wildlife decisions, but it will not necessarily guide or direct the decisions of other regional agencies and entities such as the Corps unless that Policy Direction is adopted by them. Although BPA believes adoption of consistent policy directions by other agencies and entities is desirable, this will happen only if the other agencies and entities determine that the policy is consistent with their authorities and obligations. Thus, it is uncertain how much, if any, influence BPA's Policy Direction will have on Corps decisions for operation of the Lower Snake River dams. The following discussion summarizes some of the recent key developments in the CWA controversy over the Lower Snake River dams.

In 1999, various environmental and fishing groups filed suit in the U.S. District Court for the District of Oregon, alleging that the Corps failed to comply with its obligations under the CWA by operating the Lower Snake River dams in a manner that causes or contributes to violations of the State of Washington water-quality standards for total dissolved gas (TDG) and water temperatures, as well as the state's antidegradation standard. In addition, these groups alleged that the Corps' 1998 Record of Decision (ROD) for operation of the dams was arbitrary and capricious under the Administrative Procedures Act (APA), 5 U.S.C. § 706(2)(A) for failing to address Corps compliance with its legal obligations under the CWA.

In February 2001, Judge Helen J. Frye ruled that the Corps had not considered all relevant factors in making its 1998 ROD and had failed to address CWA compliance obligations, and that the decision concerning operation of the Lower Snake River dams under this ROD thus was arbitrary and capricious under the APA.[1] Judge Frye thus remanded the case to the Corps for further investigation and additional explanation in a new Corps decision of the Corps' compliance with its legal obligations under the CWA. The Corps subsequently

[1] *National Wildlife Federation v. United States Corps of Engineers*, 132 F. Supp. 2d 876, 895 (D. Or. 2001).

issued a new ROD addressing these compliance issues in May 2001.[2] Plaintiffs then challenged this new ROD for allegedly not complying with Judge Frye's February 2001 ruling. In January 2003, Judge Frye ruled that the 2001 ROD considered all relevant factors and addressed the Corps' CWA compliance obligations, and that therefore the Corps did not act arbitrarily and capriciously or contrary to law.[3]

In addition to addressing CWA compliance issues in the May 2001 ROD, the Corps has addressed these issues in its February 2002 Final Feasibility Report (FR)/EIS for improved juvenile salmon passage through the Lower Snake River hydropower system.[4] This FR/EIS identified and assessed four alternatives, including a dam breaching alternative, for improving salmon migration. The Final FR/EIS identified a modified version of Alternative 3—Major System Improvements (Adaptive Migration) as the Corps' preferred alternative. Under this alternative, the Corp would implement a number of structural and operational measures to improve fish passage through the four Lower Snake River dams without breaching or removing these dams, with increased focus on adaptive migration capabilities. In September 2002, the Corps issued a ROD documenting its decision to adopt and implement its preferred alternative for improving Lower Snake River salmon migration.[5]

The following discussion summarizes *technical information* concerning CWA compliance from the May 2001 ROD, as well as the Lower Snake River Juvenile Salmon Migration Final FR/EIS.

The Corps' May 2001 ROD provides, among other things, a discussion of the Corps's legal obligations under the CWA and a description of efforts taken by the Corps over the past 30 years to address concerns that its dams cause increased TDG and water temperatures in rivers such as the Lower Snake.

Regarding TDG, the May 2001 ROD identifies operational changes being undertaken to minimize or avoid violations of the state water quality standard. These are actions such as making spill volume adjustments for listed species, working with BPA to minimize involuntary spills from lack of power load, and obtaining variances from the standard for voluntary spills conducted by the Corps to comply with ESA requirements for fish passage. The ROD also identifies improving existing, and installing additional, spillway deflectors at the dams as a structural modification that would reduce TDG to the greatest extent technically feasible, while still allowing for voluntary spills up to TDG levels specified in NMFS' BiOp.

Regarding water temperatures, the May 2001 ROD document notes that water temperatures at the dams sometimes exceed state water quality standards. After reviewing existing data, the Corps concludes that, while the Lower Snake River dams may contribute to a *shift in the temperature regime* in the portions of the river affected by the dams (i.e., these portions may

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[2] Corps 2001a.

[3] *National Wildlife Federation v. United States Army Corps of Engineers*, --- F. Supp. 2d --- (D. Or. 2003).

[4] Corps 2002b.

[5] Corps 2002c.

warm up or cool down earlier or later in the year than under natural conditions due to the dams), the dams do *not significantly increase the number or severity* of water temperature exceedances. Because the Corps' opinion is that there is no causal connection between the dams and water temperature exceedances, the Corps concludes that operational and structure changes at the dams are not warranted, and states that it is not now seeking variances for exceedances.

The Corps' Final FR/EIS also includes a detailed evaluation of the effects of the Lower Snake River dams on various aspects of water quality, including TDG, water temperatures, dissolved oxygen (DO), sediment accumulation and chemical contamination, nutrient levels, and trophic ecology.[6] Regarding TDG, this evaluation finds that river water passing through the dams currently reaches TDG levels that violate the state TDG standard on a frequent basis during periods of involuntary spill, as well as during periods of voluntary spill. The Corps believes that structural modifications implemented under Alternative 3 would eliminate TDG violations during periods of voluntary spill, but that TDG levels during involuntary spills would still violate the state TDG standard (although these violations would be less severe). If the dams were breached, TDG levels would return to pre-dam levels, and the Corps expects that these levels generally would be at or below the state TDG standard.

Regarding water temperatures, the Final FR/EIS water quality evaluation reiterates the conclusion made by the Corps in its 2001 decision that the primary effect of the dams is a shift in the temperature regime of the Lower Snake River. More specifically, the evaluation finds that data show that the portions of the river affected by the dams currently warm up more slowly (by about one week) in the spring and summer than they would under a breached dam scenario, but also currently cool down more slowly (by about two weeks) in early fall. The evaluation considers both empirical data and modeling projections to analyze possible increases in water temperatures from the dams. The empirical data indicate that the state water temperature standard would be exceeded approximately the same number of days in an average flow year under a breached dam scenario as it is under current conditions with the dams in place, and that water would reach the same maximum temperature in the summer under the breached dam scenario as it does under current conditions. The water temperature modeling also indicates that maximum water temperatures would be approximately the same under both scenarios. In addition, this modeling projects that water temperatures at river mile (RM) 107 (i.e., Lower Granite dam) would exceed the state water temperature standard approximately the same number of days in an average flow year under both scenarios. However, the modeling also projects that the number of days of water temperature exceedances at RM 10 (i.e., Ice Harbor dam) would be reduced by about 20% by dam breaching, as compared to existing conditions with the dams in place.

[6] Corps 2002b, Appendix C.